

T W O
C A S E S

Submitted to Consideration.

I. Of the Necessity and Exercise of a
Dispensing Power.

II. The Nullity of any Act of State
that clashes with the Law of God.

Written by Sir ROGER LESTRANGE, Knight,

And Printed from his Original Manuscript.

Now Published to prove the Divine Insti-
tution of Government, and to vindicate
the Lord Bishop of Exeter's ARGUMENTS
against the Weakness and Trifling of
Mr. Hoadly's ASSERTIONS.

L O N D O N :

Printed for W. Haver at the Rose and Crown, next
the Dog-Tavern in Ludgate-street, 1709.

[W.]
~~CASES~~
Submitted to
CASES

Submitted to

CONSIDERATION.

I. *Of the Necessity*  *of a Dispensing Power*

II. *The Nullity of any Act of State, that
clashes with the Law of God,*

 Publish this Paper, out of a Sence
(as things stand at present) of
what I owe to the King, to my
Religion, to my Country, and to
my self, and would neither mis-
lead, nor be misled. If I have Reason on my
side, no good Man will blame me for what I
have

have done. If I am in an Error, I shall so gladly submit to be better inform'd, that no charitable Man will refuse lending me his Hand to put me in the way. Besides, that it will be a Matter of Importance, for those that are of another Opinion, to satisfy the World whether I am in the right or not. I speak to the Case of all Governments, *i. e.* of Government according to Divine Appointment, and Institution of it without any Restriction, that is, either Partial or Local. I have had an unlucky Hand, and so must every Man expect to have, that makes so many Men his Enemies, as value a trimming Interest before an inflexible Honesty. For want of better Matter, I am charg'd of late with contradicting my self, which I am not yet conscious of in any Act or Syllable; either in my Allegiance, or in my Religion, from Fifty Years last past, to this very Day.

CASE I.

If it be true that Humane Laws can never come up to all the Ends and Cases of Government.

If it be true again, that where they fall short, there are certain Fiduciary Powers still ready at hand, in the Foundations of all Governments, to supply the Defects.

And if it be true in the third Place, that, without such an Auxiliary Reserve, Government falls to the Ground, for want of means to support it: The

Inference is plain and natural, from the Admittance of these three Propositions, to the Doctrine of a Dispensing Power.

The Laws of Man are the Work of frail and fallible Law-makers: or suppose them to be Men of the most consummated Wisdom and Integrity, and their Statutes as Extensive as Civil Prudence and Precaution can make them; there will be Omissions yet, Change of Interests, cross and surprizing Accidents, Necessities innumerable, and fresh Matter every Day started, to make work for new Methods and Expedients; what would become of Government now, under this Incompetency of Humane Constitutions, without taking in those Fiduciary Powers (which are wrapt up in the Laws of Nature, Equity, and right Reason) to their Aid?

Those subsidiary Laws or Powers, are Everlasting, Universal, Uniform, Steady, Just, Infallible, and All-sufficient; that Authority of 'em is unquestionable, the Equity undeniable, and the Power irresistible; they are no other, in Effect, than the Instincts and Impulses of Providence it self, graven in the Hearts of all reasonable Beings. But in short, if it be by God that Kings Reign and administer Judgment, it will then follow, That all the Prerogatives of Power are as sacred as the Ordinance it self: They are Sovereign, Inalienable, Ever, and in all places the same

Now

Now taking for granted, the Imperfections of the one, and the ample Sufficiency of the other, to all Intents and Purposes, That Government is of God, and humane Society the Work of Providence; that God's Vicegerents are answerable to their Principal for the Care and Protection of the People committed to their Charge; That it is impossible to acquit themselves of their Trust, Duty, and Commission, purely by the force of Laws of Man's making, without some higher Power to resort to for Relief; and that it is the Office as well as the Prerogative of the Sovereign, to interpose with his Authority, for the well being and Safety of the Publick: Taking all this for granted, I say, the bare Supposal of so mortal a Failure, for want of a Dispensing Power, would imply, either an Oversight, or an Injustice, in that Original Grant and Command: An Oversight in the Disproportion of the Means to the End; or an Injustice in Exacting Impossibilities, and requiring from Governours, more than they are able to do. To keep clear now of so lewd an Imagination, it must be honestly presumed, that God has not left us without some Appeal from the Infirmities of Mankind: So that I shall now speak a general word or two, concerning the Rise, Make, and Obligation of humane Laws, and what Affinity they have, or ought to have with Laws Divine.

The great Dictator of Rules and Measures for the governing Men in Society, was God himself; and those first Principles have been handed down to us, in an interrupted course of Practice and Tradition, from their very Institution to this Day, by the Voice of Nature, and by the universal Assent of all Ages, to the eternal Equity and Reason of them. They are of the same force at this Instant that ever they were, and so much the Standard of Political Acts, that they are no further binding, than as they conform to this Test. Government, in short, is no more than Right Nature put in Exercise; general Precepts distributed into particular Provisions; the secret Influences of rectified Reason made publick, and digested into Laws; It is the Law of God, in fine, that speaks in the Law of Man; and this Law Paramount, is the sovereign Guide that Law-makers ought to follow. Not but that Governors and Legislators have a Liberty of Discretion in things indifferent; but they are nevertheless bound up not to depart from the Equity of the primary Fundamentals, for no Provision of State must be admitted in bar of those Prerogatives. There will not be much Difficulty, I presume, to yield the Imperfection of humane Laws, the Sufficiency of the Laws of Government, the Necessity of Government it self, and of a dispensing Power to uphold it; nor finally, that all Laws of State are to be tried by God's Laws, and that
the

the Use and Intent of those Laws of Prerogative is to supply, or to correct, what is wanting or amiss in the Law of the Constitution. All this must be acknowledg'd; for otherwise we shall have the Law of this, or that Community set up, against the Law of the Universe. Man's Contrivance against God's; Law shall leave us at a loss a thousand ways, for want of Power, Direction, due Application, and the like, against Laws that provide for us in all Instances whatsoever. We have spoken of the need, and use of a dispensing Power; the next Point in order will be the proper Receptacle of it.

If the dispensing Power be an Essential of Government, where should it be lodg'd, but in the common Repository of all the Ensigns of Majesty? For it is incorporated with the first Principles of Government, and so to be exerted from time to time, at the Will and Pleasure of the supream Magistrate, with a saving only, to the sacred Obligations of right Reason, and the indispensable Privileges and Duties of the ruling Office; humane Laws are at best but the Specification of particular Duties, drawn from the general Lights and Precepts of Nature; and recourse must be had in all Cases, to those Authentic Originals, for the correcting of false or imperfect Copies. What's to be done, where the Letter of the Law draws one way, and the Conscience of the Prince another? He must of necessity dis-

pense with one of the two Laws. He is accountable to God, for the Breach of Trust, if he does not act, according to his Judgment, for the good of his Subjects; and the Law of the Land can never oblige the Sovereign to do any thing contrary to the Law of his Authority, and Commission, which is no more, than employing the Law of his Prerogative, for the saving of a State from the Law of the Land, (which as it may happen) would hazard the ruin of it. But where is the Danger at last, of this Bug-bear Prerogative of a Dispensing Power?

The Right, and Practice (they say) of dispensing with one Law, lays all the rest at Mercy; but I am of Opinion rather, that the want of such a Power lays Government it self at Mercy. And whereas it is objected, that it sets up absolute Power under the Cloak of a Dispensation; it does, in truth, prevent the Introducing of an Anarchy, for fear of Tyranny: Neither is it the business of a Dispensation, to invalidate humane Laws, but to uphold the Authority of the Laws Divine. Reason of State and Equity, make all Governments to be absolute, in some Cases and Occasions; and what matters it to us, whether this comes by Creation, or by Accident? Briefly, he that quarrels with Government for being in some respect arbitrary, quarrels with God's Providence for making it so, and for making it necessary to be: And this Excep-
tion

tion strikes at the very Foundations of Power it self. If a Prince cannot dispense, he cannot govern where necessity is too strong for the Law. His Commission is positive, and he acts under a Command, as well as under a Duty. He is, upon his Peril, to Execute the Powers that are given him, and as much obliged to assert his Prerogative against all Usurpations, as not to abuse his Power to Violence and Oppression: Or even in case of such an Abuse, a Prince has Power to do many things, that he has not a Right to do; and therefore the Morality of acting must be distinguished from the Authority of governing, for the Character stands firm, in Despite of Male-Administration.

There is another unlucky Mistake too, that's very Rife [*Stay for a Parliament, they cry, and let those Laws be repeal'd, that are not fit to be continued.*] This is the best way, certainly, where the time, the Quality of the Case, and the Temper of the People will bear it. But what if the Danger presses? What if the delay be certain Death, and the Disease cannot wait for a Remedy? The King's Duty never sleeps; His Authority never intermits; and he is as much accountable to Almighty God, for the Exercise of His Function, out of Parliament as in Parliament. If your own Laws will not do it, (says God) make use of Mine, as you will answer the contrary. Shall a Prince say, *Lord, I must not Dispense?* As if he might dispense God's Law, tho' not with His own.

And

And then for the Quality of the Case; the Privacies of State-Matters, as the Manage of secret Commissions, Negotiations, Intelligences, Councils, and Intrigues; These are Affairs so peculiar to the Cabinet, that they are wholly foreign to the Cognizance of a Parliament; and yet these invisible Wheels are a kind of Political, Perpetual Motion, and of absolute necessity to the great Design of Government it self. There are other Cases, where the ground of Suspension is only this or that particular Emergency. And in these Cases it often falls out, that it may be Death almost not to suspend, and yet as mortal to repeal the same Law.

And so the Temper of the People must be allowed to go a great way too; when the Mobile are poyson'd with Ill Opinions and Jealousies of their Superiours; as in the Instance of that fatal Parliament of Forty One, and the danger of two Parliaments since, at *Westminster* and *Oxford*, where his Majesty scaped very narrowly the dear Experiment of the same Remedy.

Well! but 'tis a Temptation, they pretend, to the setting up of an Arbitrary Power, to say, *That a Prince may do it if he will*; now this is to suppose, that whoever may do it if he will, will do it if he can; and if it holds that way, there's nothing but Oppression and Tyranny upon the Face of the Earth: For the Prince that has it not in his Power to Oppress, has

has it not in his Power to Govern; for he is govern'd, where he is Impotent, and the Controul sets up one Sovereignty against another.

The Republicans Insist mightily upon the Trust, the Receptacle, and the possible Abuse of it: But what now, if there be no avoiding of such a Trust, What if there never was any Government in the World; or if humane Society cannot subsist without it? What if at the same time that this Trust is Controverted, there are a hundred other more dangerous Trusts admitted; that is to say, as to the enabling a Prince to make Slaves of his People? What if the Trust, and the Power have been always in the same hands? And in Conclusion, if it be utterly Impossible to secure People against a Possible Abuse: How wild and how unreasonable a thing is it, to raise Scruples against the Eternal Course of Nature and Justice!

1st, To speak to the Matter as it lies, some where or other there must be a Trust, and that Trust may be abused, where ever it is placed. So that a Trust is Inevitable.

2^{dly}, If it never was otherwise, the Case is Universal.

3^{dly}, There must be a Trust amongst all sorts and degrees of Men, in all manner of Dealings, and in a Million of common Cases, where Life, and Limb, Liberty, Fortune, Body, Soul, and good Name (perchance), may all be concerned. There is no place, in fine, for

for the Offices, either Publick or Private of humane Society without it. What's the Chancery, but a Court of Dispensation, for granting Relief in Equity, against the Letter of the Law? Do we not trust Divines, Surgeons, Physicians, Lawyers, Bankers, Relations, Children, Servants? Nay, and so trust 'em too, as in some Cases, to allow 'em a certain Latitude of abating somewhat of the Rigor of their Commission: And in a word, there is a Law of Necessity, that supersedes the Obligation of all our positive Laws. Upon the main, we cannot live Man by Man, without trusting one another; and Providence has made this Trust so necessary, that we can have neither Peace, Safety, Conversation, nor Property, without it: And shall we make a greater Difficulty to trust Governours with the Administration of Justice? Nay, and where God has intrusted 'em before-hand; for Kings are God's Trustees, not the Peoples. Will Men have no Government at all, unless they may have such a Government as God never made, and which God has made Impossible ever to be? Why this would be to make every *Tam* and *Will* an Umpire of the Controversy, where Every-body is No-body; and yet this very Mobile must be trusted over again, and find their Vouchers too.

4. Why is so much more Stress laid upon this single Prerogative than upon all the rest, that may do fifty times more Mischief! Why are not People as much afraid of Rapes, Massacres, Robberies, and other Military Violences from the indisputed Power of the Sword, as they are of Tyranny and Oppression from the Prerogative of the Dispensing Power? Why not of the [*Mint*] [*Life and Death*] [*War and Peace*] for fear of false Money, protecting Criminals, bringing in Foreign Forces, &c.? All comes

come to this at last, that a Just and a Gracious Prince, will not misapply his dispensing Power, and he that would make himself wholly Absolute, can do his Work, in despite on't and without it.

sibly. The Power and the Trust are so inseparable, that where there's no Publick Power, there's no Publick Trust, and where there's no Publick Trust, there's no Publick Power; what's Authority, without the right to judge of the Time, the Case, the Measure, &c. as if the Multitude were to judge and appoint, and the Sovereign only to execute; or in plain *English*, to depose himself, in a Resignation to the Dictates of the People. Let 'em once prescribe to a Prince what's fit for him to do, and they shall soon put it to a Vote among themselves, whether it be fit or no for that Person to govern. But what Pretence have they to govern in this Prerogative more than in all the rest, and how came they to be Rulers in this Case, and Subjects in all others? To close this Point, the End of Law is Equity, and where the Letter of the Law will not reach that Equity, it is to be presum'd, that the Law speaks one thing and means another: In this Case it belongs to the Sovereign to explain, and execute that Law according to the true Intention of it, the Equity of it being the Rule of Government.

6. It cannot be imagin'd that the possible Abuse of Power (which is impossible to be cleared or prevented) should be offered as a reasonable Argument against the Divine as well as Political, and the necessary Use of it, for it puts a stand to the Sun in its Course, which is all one with a stop to the orderly Motions in Government.

It is objected once again, What if the chief Ruler should say, there is a Necessity when there is none,

none, and make that pretended Necessity the ground for his proceeding at Will and Pleasure? Necessities, they say, are Notorious, and carry Pomp and Noise along with 'em. In Sea Breaches or Conflagrations the Multitude are Witnesses to the Stress. To which I answer, that if a Prince says there is a Necessity where there is none; the People on the other hand, may say there is none where there is, and no Umpire at last to end the Strife. But right or wrong, the former is a Sentence of Order and Authority, upon a Foundation of Law and Conscience; the other an indeterminable Licence, in Opposition to Practice and Common Sense, and an Usurpation over and above. The People judge by their Eyes, their Ears, and shortly, by what they see, hear, or feel; but the Magistrate reads Effects in their Causes, and it is both the Prudence and Duty of his Function, to prevent Mischief in the very Seeds and Roots, before they come to a Head.

To sum up the whole now, if Government, the Rules, Powers, and Measures of Government, be all of God; if those Foundations be laid in right Reason, and Justice, and communicated to all Mankind, in the very Bowels and Instincts of reasonable Nature: If Humane Laws fall short of the Ends they were design'd for, and no means left us to supply the Failing; the Inference is, that either those Original Lights are given us in vain; or that Providence has made a false Reckoning, which are two Points, that cannot be so much as suppos'd, without the highest Indignity to Gods Power and Wisdom. As to the Receptacle of this Sovereign Prerogative, and the Judgment where, when, how, and in what Degree it is to take Place, the Order, Nature, and End of Government, tell us that it is impossible to vest it in the People, without confounding Sovereignty with Subjection.

C A S E

CASE II.

The Nullity of an Act of State that clashes with the Law of God.

The two Cases above, are but effectually the Abstract of twenty or thirty Observations upon the same Text: I have done with the former, and as to the other now, it is out of doubt, that all those pretended Laws are Nullities, that take upon them to forbid what God and Nature command, or to command what God and Nature forbid. This single Position might serve for a full and final Resolution upon this Point; but having touch'd upon one Particular under this Topick; in several Observators (in the Case of *Charles I.*) and particularly, in my Answer to a Letter to a Dissenter, &c. I would willingly propagate the Opinion, if it will hold Water; and I am as ready to relinquish it, if it will not abide the Test; but however, I shall recommend it to the Publick once again, in the very same Words.

In the Case of the Proceedings, under *Charles I.* against the Papists. That excellent Prince, according to all reasonable and humane Presumption, lost his Crown and his Life, in Compliment to avoid an Act of his own, in pretending to bar himself the Use and Service of his Subjects; as if an Act of State could supercede a Fundamental of God and Nature; I have the Authority of a great Man (*Bp. Sanderson*) to back me in the Casuistical Strefs of this Instance; God (says he) hath given to his Vicegerents here on Earth, a Right in, and Power over the Persons of all their Subjects, within their several Respective Dominions, even to the spending of their Lives in their Country's Service, whensoever they shall be by
their

their Authority call'd thereunto. §. Cases: P. 71.) Now if they have these Privileges of Right and Power, from God; and extending to all, and whensoever, without Exception either to Time, Number, or Distinction of Persons; what Earthly Power shall dare to controul this Commission? And I have one Word more to offer now, (that I have formerly spoken to) which comes yet a little closer to the Point.

The Precept of, *Honour thy Father and thy Mother*, is undoubtedly of Divine Authority, and a Command of an immutable and indispensible Obligation; and it has Catholick Assent to't, that it extends as well to our Civil and Political, as to our natural Parents. By this Law, all Subjects are bound in Conscience to attend the Call and the Service of their Prince, for the Precept is positive, without any Qualification, Limitation or Condition whatsoever. The Question will be shortly this now, whether any King, can by any Act of Civil Authority, divest himself of this Right over the Persons of his Subjects? I do not say but he may chuse whether he will command them or not, but he cannot discharge his People of their Duty of Obedience, in Case he requires their Service; that is to say, in any Case, that is not contrary to the Will and Word of God, no humane Law can absolve them from that Office of Allegiance; so that in Conclusion, either those Subjects are clear before God, that serve their Prince, when by him thereunto required, notwithstanding any Law of Man to the contrary, or the Ten Commandments may be turn'd to Waste Paper, if the Law of the Land shall forbid upon a Penalty, that which the Law of God commands upon a Penalty.

Now
ver,
ver,
or
hall
one
erly
the

ber,
om-
ati-
ex-
our
are
ber-
ve,
liti-
this
Ci-
the
may
but
O-
hat
the
ab-
hat
be-
him
of
nts
the
the